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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 903.

THE TOWN OF UNITY, PLAINTIFF IN ERROR,

vs.

ALVAH A. BURRAGE, HENRY G. CROWELL, AND ALPHONSO J. ROBINSON, AS RECEIVERS OF THE MERCANTILE INSTITUTION FOR SAVINGS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 2, 1880.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court, before you, between Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, as they are receivers of the property and effects of the Mercantile Institution for Savings, and the town of Unity, in the county of Piatt, a manifest error hath happened, to the great damage of the said town of Unity, as by its complaint appears: We being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so
b that you may have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Springfield, in said district, this 1st day of September, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

[SEAL.] J. A. JONES,
Clerk U. S. Cir. Ct., S. Dist. Ills.

(Indorsed:) U. S. Supreme Court. Alvah A. Burrage et al. vs. Town of Unity. Writ of error. Filed Sept. 1st, 1880. J. A. Jones, clerk.

c UNITED STATES OF AMERICA, *ss:*

To Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, as they are receivers of the property and effects of the Mercantile Institution for Savings, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein the town of Unity is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness S. H. Treat, district judge of said district of Illinois and one of the judges of said circuit court, this 1st day of September, A. D. 1880.

S. H. TREAT.

We hereby accept service of the foregoing citation this 13th day of September, A. D. 1880.

DINSMOOR, STAGER & DINSMOOR,
Att'ys for Def'ts in Error.

(Indorsed:) U. S. Supreme Court. Alvah A. Burrage et al. vs. Town of Unity. Citation.

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, judge of the district court of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, pro tempore, sole judge of said court, on Wednesday, the 25th day of August, at the June term of said court, in the year of our Lord eighteen hundred and eighty, and of our Independence the one hundred and fifth year.

J. A. JONES, *Clerk.*

ALVAH A. BURRAGE, HENRY G. CROWELL, and Alphonso J. Robinson, receivers of the property and effects of the Mercantile Savings Institution,
v.
THE TOWN OF UNITY, IN THE COUNTY OF Piatt, and State of Illinois. } 5822. Assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, receivers of the property and effects of the Mercantile Savings Institution, citizens and residents of the State of Massachusetts, put in their place Messrs. Dinsmoor, Stager & Dinsmoor, their attorneys, against the town
2 of Unity, a municipal corporation created by and existing under the law, and a citizen of the State of Illinois, of a plea of trespass on the case on promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 13th day of December, in the year of our Lord eighteen hundred and seventy-nine, came said plaintiffs by their attorneys and filed in the office of the clerk of said court their bond for costs in said cause, which is in the words and figures following, to wit:

Bond for costs.

Circuit court, January term, A. D. 1880.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

ALVAH H. BURRAGE, HENRY G. CROWELL, and Alphonso J. Robinson, as they are receivers of the Mercantile Institution for Savings and citizens of the Commonwealth of Massachusetts,
vs.
THE TOWN OF UNITY, IN THE COUNTY OF Piatt, and State of Illinois.

I do herby enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court in default of payment b they plaintiff, or of any costs ordered or adjudged to be paid by them. I do

3 hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

JAMES DINSMOOR.
J. DINSMOOR.

(Endorsed:) Filed Dec. 13th, 1879. J. A. Jones, clerk.

And afterwards, to wit, on the 13th day of December, in the year aforesaid, there was issued out of said clerk's office a summons in said cause, directed to the marshal of said district to execute, which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you to summon the town of Unity, in the county of Piatt, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, n the district aforesaid, on the first Monday of January next to answer unto Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, as they are receivers of the property and effects of the Mercantile Institution for Savings, of a plea of trespass on the case upon promises, to their damage, as they allege, of four thousand dollars, and have
4 you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this thirteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and fourth year.

[L. S.] J. A. JONES, *Clerk.*

Return of marshal.

I have appointed, and by these presents do constitue W. M. Holmes my true and lawful deputy, to execute the annexed writ Alvah A Burrage et al. vs. Town of Unity, and to make return of the execution thereof according to law.

E. R. ROE,
U. S. Marshal.

I have served the within writ upon the town of Unity therein named in the following manner, to wit, upon James A. Hawks, supervisor of said town of Unity on the 26th day of December, A. D. 1879, by personally delivering to him a true copy of the same on the aforesaid day.

E. R. ROE,
U. S. Marshal,
By WM. M. HOLMES,
Special Deputy.

Wm. M. Holmes, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return and according to law.

W. M. HOLMES.

Sworn to before me this 29th day of December, A. D. 1879.

SAMUEL R. REED,
U. S. Commissioner.

5 (Endorsed:) Filed January 3rd, 1880. J. A. Jones, clerk.

And afterwards, to wit, on the 25th day of December, in the year of our Lord eighteen hundred and seventy-nine, came said plaintiffs by their attorneys and filed in the office of the clerk of said court their declaration in said cause, which is in the words and figures following, to wit:

Declaration.

Circuit court, January term, A. D. 1880.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, as they are receivers of the property and effects of the Merchantile Savings Institution and citizens of the Commonwealth of Massachusetts, by Dinsmoor, Stager & Dinsmoor, their attorneys, complain of the town of Unity, in the county of Piatt, and State of Illinois, which said town the plaintiffs aver to be a municipal corporation created by and existing under the law, and a citizen of the State of Illinois, of a plea of trespass on the case on promises. For that the said town of Unity, at said district, by the name and style of the township of Unity, on the 12th day of May, A. D. 1873, made its fourteen promissory notes the date whereof is the day and year aforesaid, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, issued of that date and delivered on, to wit, the 15th day of May, A. D. 1873, signed by William G. Snyder, its supervisor, and
6 Samuel H. Holt, its town clerk, by each of said promissory notes the said defendant promised to pay the Indiana and Illinois Central Railway Company, or bearer, the sum of one thousand dollars fifteen years after date, at the American Exchange National Bank, New York, with interest thereon at the rate of ten per cent. per annum, payable annually, in accordance with the several coupons annexed thereto, on presentation and delivery of the said coupons at the American Exchange National Bank, New York.

And for said interest coupons were annexed to each of said promissory notes—a copy of one of which said promissory notes is hereto annexed, the others being exactly alike except as to numbers—and a copy of each of said coupons due and unpaid is hereto annexed.

And each of said promissory notes recites that it is issued under and by virtue of a law of the State of Illinois, entitled "An act supplementary to and amending an act entitled 'An act to amend the act entitled an act to incorporate the Decatur and Indianapolis Railroad Company,' approved February 8th, 1853," in force March 27th, 1869.

And under a law of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns" in force 16th April, 1869. And in accordance with the vote of the electors of said township of Unity, at a special election held in said township on the 13th day of September, A. D. 1869, under
7 the provisions of said acts and in accordance therewith.

And the plaintiffs further aver that said promissory notes have been duly registered in the office of the auditor of public accounts of the State of Illinois, pursuant to said act of April 16, 1869, as from the certificate of said auditor of public accounts attached to each of said promissory notes will more fully appear.

That the plaintiffs are the bearers of the coupons for interest on said promissory notes which fell due on the 12th day of May, A. D. 1878, being seven coupons of one hundred dollars each. And also of the fourteen coupons annexed to said promissory notes and of even number therewith, each of which said coupons became due and payable on the 12th day of May, A. D. 1879, making in all the sum of twenty-one hundred dollars.

And the said defendant has failed to provide funds for the payment of said instalments of interest at the American Exchange National Bank, New York. And has utterly neglected to pay the same, although the time of payment has long since elapsed.

And whereas also the said defendant afterwards, to wit, on the first day of December, A. D. 1879, to wit, at said district became and was indebted unto the plaintiffs in a large sum of money, to wit: The sum of four thousand dollars for money before that time lent and advanced to and paid, laid out and expended for said defendant by said plaintiff at said defendants request, and for money before that time had and
8 received by said defendant to and for the use of the plaintiff; and also in like sum for goods, wares, and merchandise, before that time, sold and delivered by said plaintiffs to said defendant at like special instance and request, and also in like sum for labor, care, and diligence of said plaintiffs before that time, done and performed by said plaintiffs for said defendant, and at the like instance and request of said defendant, and also in like sum then and there found due and owing said plaintiffs, on an account stated between them, and in the like sum for the forbearance of large sums of money before then due plaintiffs from the defendant, and by plaintiffs foreborne at defendant's request.

And being so indebted said defendant in consideration thereof then and there undertook and promised to pay said plaintiff said several sums of money above mentioned, when thereunto afterwards requested, to wit, the said instalments of interest which were due May 12th, 1878, amounting to the sum of seven hundred dollars with interest since said date, and the said instalments of interest which were due May 12th, 1879, with interest on the same since said date.

Yet the said defendant, not regarding its said promises and undertakings, but contriving, &c., although often requested so to do, has not paid said plaintiffs either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused to the damage of said plaintiffs of four thousand dollars,
9 and, therefore, they bring this suit.

DIXSMOOR, STAGER & DIXSMOOR,
Pl'ffs' Att'ys.

Copies of instruments and account sued upon.

UNITED STATES OF AMERICA,
State of Illinois:

PIATT COUNTY RAILROAD BOND, TOWNSHIP OF UNITY.

Bond.

Know all men by these presents that the township of Unity, in the

county of Piatt, and the State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Unity hereby binds itself and agrees to pay to the Indiana and Illinois Central Railway Company or bearer, at the American Exchange National Bank, New York, fifteen years after date, with interest thereon at the rate of ten per centum per annum, which interest shall be payable annually, in accordance with the several coupons hereto annexed, at the American Exchange National Bank, New York, upon the presentation and delivery of such coupons, until the payment of the said principal sum.

The said township hereby reserving the right to redeem this bond at any time after eight years from the date hereof, by the payment of the said principal sum and the interest due thereon at the time of such redemption.

This bond is one of a series of fourteen bonds, of one thousand dollars each, numbered from one to fourteen, inclusive, issued under and by virtue of the acts of the general assembly of the State of Illinois, entitled "An act supplementary to and amending an act entitled 'An act to amend the act entitled an act to incorporate the Decatur and Indianapolis Railroad Company,' approved February 8th, 1853, in force March 27th, 1869, and an act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns,'" in force 16th April, 1869, and in accordance with the vote of the electors of said township of Unity, at a special election held in said township on the 13th day of September, A. D. 1869, under the provisions of said acts, and in accordance therewith, and the faith of said township is hereby pledged for the payment of said principal sum and interest as aforesaid.

In testimony whereof, the supervisor and town clerk of said township of Unity have hereunto set their hands and subscribed their names this 12th day of May, A. D. 1873.

SAMUEL H. HOLT,
Town Clerk.
WILLIAM G. SNYDER.
Supervisor.

Endorsement.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, May 15th, 1873.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

(AUDITOR'S OFFICE, ILLINOIS. SEAL.)

C. E. LIPPINCOTT,
Auditor P. A.

Endorsement of town clerk on bond.

UNITY TOWNSHIP RAILROAD BOND, PIATT COUNTY, ILLINOIS.

Interest ten per cent. per annum, payable annually. Principle paya-

ble in fifteen years, or at any time after eight years, at the option of said township, from 12th day of May, A. D. 1873. Registered in my office this 12th day of May, 1873.

SAMUEL H. HOLT,
Township Clerk, Unity Township.

12 PIATT COUNTY.

$100 RAILROAD BOND.—INTEREST COUPON. No. 3.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1878, one hundred dollars, being interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 4.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1878, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 5.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1878, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 6.

13 Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1878, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 7.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1878, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 8.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1878, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100 RAILROAD BOND.—INTEREST COUPON. No 9.

14 Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 1.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 2.

Township of Unity will pay to bearer at the American Exchange

National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 3.

Township of Unity will pay to bearer at the American Exchange
15 National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100 RAILROAD BOND.—INTEREST COUPON. No. 4.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 5.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100 RAILROAD BOND.—INTEREST COUPON. No. 6.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one
16 hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 7.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 8.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 9.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

17 WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 10.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 11

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 12.

Township of Unity will pay to bearer, at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

18 PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 13.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

PIATT COUNTY.

$100. RAILROAD BOND.—INTEREST COUPON. No. 14.

Township of Unity will pay to bearer at the American Exchange National Bank, New York, on the 12th day of May, 1879, one hundred dollars, being one year's interest on bond numbered as above.

WILLIAM G. SNYDER,
Supervisor.
SAMUEL H. HOLT,
Town Clerk.

Town of Unity to Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, as they are receivers of the property and effects of the Mercantile Savings Institution, Dr.

To money lent and advanced.....	$4,000
To money paid, laid out and expended for defendants.....	$4,000
To money had & received to & for the use of the plaintiffs....	$4,000

(Endorsed:) Filed December 25th, A. D. 1879. J. A. Jones, clerk.

19 And afterwards, to wit, on the 6th day of January, in the year of our Lord eighteen hundred & eighty, came said defendant by its attorney and filed in the office of the clerk of said court its demurrer in said cause, which is in the words and figures following, to wit:

Demurrer.

Circuit court, January term, 1880.

UNITED STATES OF AMERICA.
Southern District of Illinois:

ALVA A. BURRAGE ET AL. } Demurrer.
vs.
TOWN OF UNITY. }

And now comes the defendant by Henry, its attorney, and says that plaintiffs' declaration and each and every count thereof is insufficient in law, wherefore, &c.

W. T. HENRY,
Def't's Att'y.

(Endorsed:) Filed January 6th, 1880. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday, the 7th day of January, at the January term of said court, in the year last aforesaid, the following proceedings were had in said court and entered of record in said cause, to wit:

Order allowing defendant to plead.

ALVA A. BURRAGE ET AL. } Assumpsit.
vs.
TOWN OF UNITY. }

20 On motion of defendant by W. J. Henry, esq., its attorney, leave is granted to plead herein by 20th day of January inst.

And afterwards, to wit, on the 8th day of January, in the year aforesaid, came again said defendant by its attorney and filed in the office of the clerk of said court its demurrer in said cause, which is in the words and figures following, to wit:

Demurrer.

In the circuit court, January term, A. D. 1880.

UNITED STATES OF AMERICA.
Southern District of Illinois:

ALVAH A. BURRAGE ET AL. } Demurrer.
vs.
THE TOWN OF UNITY. }

The defendant, the Town of Unity, by W. J. Henry, its attorney comes and defends, when, &c., and says that the declaration of the plaintiff in said cause and each and every count thereof is insufficient in law to be answered unto, and this it is ready to verify.

W. J. HENRY,
Att'y for Def't.

(Endorsed:) Filed Jan'y 8th, A. D. 1880. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday, the 7th day of April, at the term & year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

21 *Order overruling demurrer.*

ALVA A. BURRAGE ET AL. / *v.* / TOWN OF UNITY. } Assumpsit.

And now, on this 7th day of April, 1880, come the parties by their counsel, and submit to the court the defendant's demurrer to the plaintiffs' declaration, and the court, having heard and considered the same, and being sufficiently advised in the premises, doth overrule said demurrer, and leave is given the defendant to plead to the declaration by the first Monday of June next, to which time this cause is continued.

And afterwards, to wit, on the 10th day of June, in the year aforesaid, came said plaintiffs, by their attorneys, and filed in the office of the clerk of said court their stipulation herein in said cause, which is in the words and figures following, to wit:

Stipulation.

Circuit court, June term, A. D. 1880.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

ALVAH A. BURRAGE ET AL. / *vs.* / TOWN OF UNITY. } Suit on bonds and coupons.

Whereas the plaintiffs in the above-entitled cause have instituted a suit in said court against said defendant to recover the amount alleged
22 to be due on certain bonds and coupons, and whereas the defendant, by its counsel, interposed a demurrer to plaintiffs' declaration, which said demurrer has been overruled by said court, and the defendant is desirous of standing by its demurrer and appealing from the decision of this court to the Supreme Court of the United States:

Now, therefore, it is mutually agreed by and between the parties thereto that on the filing with the clerk of this court the bonds and coupons of said defendant, amounting on the face, for principal and interest to June 10th, 1880, to the sum of seventeen thousand eight hundred and sixteen dollars and twenty-nine cents ($17,816.29), judgment may be rendered for the plaintiffs for said sum against said defendant.

And it is further agreed that the rights of neither party shall be prejudice' by the making of this agreement further than that said judgment shall be rendered upon said bonds and coupons as if the same were wholly due and this suit had been regularly brought on the same so due. And that the defendant may stand by its demurrer and shall have the right to insist upon its said demurrer on appeal to the Supreme Court on the legal liability of said defendant to pay any portion of plaintiffs' claim, but not that the whole sum was not by the terms of said bonds and coupons wholly due at date of suit.

And it is further agreed that said defendant may pray an appeal in due form of law, without security on its bond; and that said cause,
23 when so appealed, shall stand for trial or hearing under rule (20) twenty of the Supreme Court of the United States at the next term thereof.

DINSMOOR, STAGER & DINSMOOR,
Pl'ffs' Att'ys.

W. J. HENRY, *Att'y for Def't.*

(Endorsed:) Filed June 10th, 1880. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday, the 25th day of August, at the June term of said court, in the year of our Lord eighteen hundred and eighty, the following further proceedings were had in said court and entered of record in said cause, to wit:

Judgment.

ALVAH A. BURRAGE, HENRY G. CROWELL, Alphonso J. Robinson, as they are receivers of the property and effects of the Mercantile Institution for Savings, *vs.* TOWN OF UNITY.	Assumpsit.

This day come again the parties by their attorneys, and the defendant desiring to stand by its demurrer herein overruled April 7, 1880, and saying nothing further in bar or preclusion of plaintiffs' action, it is therefore the opinion of the court that the plaintiffs have sustained damages by reason of the breaches of promises in their declaration mentioned, and by stipulation filed herein June 10th, 1880, said
24 damages are assessed at the sum of seventeen thousand eight hundred and sixteen dollars and twenty-nine cents.

It is therefore ordered and adjudged by the court that the plaintiffs recover of the defendant the said sum of seventeen thousand eight hundred and sixteen dollars and twenty-nine cents, their damages aforesaid in accordance with said stipulation, together with interest thereon from said tenth day of June, 1880, and also the sum of twenty-nine dollars and seventy-five cents, their costs and charges by them about their suit in this behalf expended, and that execution issue therefor.

On motion of defendant a writ of error to the Supreme Court of the United States is allowed without security on bond of said defendant, and cause to be submitted under rule 20 of said Supreme Court.

25 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States, within and for the southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed & proceedings thereon had in a certain cause wherein Alvah A. Burrage, Henry G. Crowell, and Alphonso J. Robinson, as receivers of the property & effects of the Mercantile Savings Institution, are plaintiffs, and the town of Unity, county of Piatt, Illinois, is defendant, as fully as same appear of file & of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this 24th day of Sep-

tember, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

[SEAL.] J. A. JONES, *Clerk.*

26 The Town of Unity, plaintiff in error, by W. J. Henry, its attorney, complains that error has intervened in the foregoing record and proceedings to its damage, and that said errors are in these:

27 1st. The court erred in overruling the demurrer to plaintiffs' declaration.

2nd. The court erred in rendering judgment for the plaintiffs and against the defendant.

3rd. The court erred in not sustaining the defendant's demurrer to plaintiffs' declaration and to each count thereof.

4th. The court erred in not holding that the bonds and coupons in plaintiffs' declaration mentioned were issued with warrant or authority of law.

5th. The court erred in not holding that the act under which the bonds were issued was unconstitutional and void.

For these errors, the Town of Unity prays that said judgment may be reversed and case remanded with directions to render judgment upon demurrer for defendant in error.

W. J. HENRY,
For Pl'ff in Error.

(Indorsement on cover:) No. 903. The Town of Unity, plaintiff in error, vs. Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, as receivers of the Mercantile Institution for Savings. S. Illinois C. C. U. S. Filed 2nd October, 1880.

—IN THE—

United States Supreme Court

OCTOBER TERM, A. D. 1880.

NO. 908.

The Town of Unity,
Plaintiff in Error.

vs.

Alvah A. Burrage, et. al.
Defendants in Error.

ABSTRACT AND BRIEF.

W. J. HENRY,
Attorney for Plaintiff in Error.

In The Supreme Court

OF THE

United States Of America,

OCTOBER TERM, A. D. 1880.

ALVAH A. BURRAGE, et. al. vs. THE TOWN OF UNITY. } Error to the Southern District of Illinois.

ABSTRACT.

The plaintiffs Alvah A. Burrage, Henry G. Crowell and Alphonso J. Robinson, receivers of the property and effects of the Merchantile Saving Institution, citizens and residents of the state of Massachusetts, complain of

the town of Unity, in the county of Piatt, and state of Illinois, a citizen of the State of Illinois, of a plea of trespass on the case on promises.

For that the town of Unity on the 12th day of May, 1873, made its fourteen promissory notes, numbered 1 to 14, issued of that date, and delivered on the 15th day of May, 1873, signed by William G. Snyder its supervisor, and Samuel H. Holt its Town Clerk. By each of said promissory notes the said defendant promised to pay the Indiana and Illinois Central Railway Company, or bearer, the sum of one thousand dollars, fifteen years after date, at the American Exchange National Bank New York, with interest thereon at the rate of ten per cent per annum, payable annually in accordance with the several coupons annexed thereto, on presentation and delivery of the said coupons, at the American Exchange Bank New York; and for said interest, coupons were annexed to each of said promissory notes, a copy of one of which said promissory notes is hereto annexed, the others being exactly alike, except as to numbers, and a copy of each of said coupons due and unpaid is hereto annexed; and each of said promissory notes recites that it is issued under and by virtue of a law of the state of Illinois, entitled "an act supplementary to and amending an act, entitled an act to amend the act, entitled an act, to incorporate the Decatur and Indianapolis Railroad Company, approved February 8th, 1853, in force March 27th, 1869," and under a law of the State of Illinois, entitled "an act to fund and provide for paying the railroad debts of counties, townships,

cities and towns," in force April 16th, 1869, and in accordance with the vote of the electors of said township of Unity at a special election held in said township, on the 13th day of September, A. D. 1869, under the provisions of said acts, and in accordance therewith, and the plaintiffs, further aver that said promissory notes have been duly registered in the office of the auditor of public accounts of the State of Illinois, pursuant to said act of April 16th, 1869, as from the certificates of said auditor of public acounts, attached to each of said promissory notes will more fully appear. That the plaintiffs are the bearers of the coupons for interest on said promissory notes which fell due on the 12th day of May 1878, being seven coupons of one hundred dollars each, and also the 14 coupons annexed to said promissory notes, and of even number herewith, each of which said coupons, became due and payable on the 12th day of May 1879, making in all $2100,00; and the said defendant has failed to provide funds for the payment of said installments of interest at the American Exchange Bank, New York, and has utterly neglected to pay the same although the time of payment has long since elapsed.

Plaintiffs have also added the common counts, and concluded the breach as follows: and being so indebted, the said defendant in consideration thereof then and there undertook and promised to pay the plaintiff said several sums of money above mentioned, when thereunto afterwards requested to-wit: the said installments of interes

which were due May 12th, 1878, amounting to the sum of seven hundred dollars, with interest since said date: and the said installments of interest which were due May 12th, 1879, with interest on the same since said date, yet the said defendant, not regarding its said promises and undertakings, hath not paid said plaintiffs either of said sums of money, &c.

To this declaratian the town of Unity, demurred, and says that the declaration of the plaintiff in said cause, and each and every count thereof is insufficient in law to be answered unto. The demurrer was overruled by the court. Defendant stood by its demurrer: and afterwards on the 10th day of June, 1880, a stipulation was filed in said cause, as follows:

UNITED STATES OF AMERICA, } ss.
Southern District of Illinois, }

Circuit Court, June Term, A. D. 1880.

ALVAH A. BURRAGE, *et. al.*
vs.
TOWN OF UNITY. } Suit in Bonds and Coupons.

"Whereas the plaintiffs in the above entitled cause, have instituted a suit in said court against said defendant to recover the amount alleged to be due on certain bonds and coupons; and Whereas, the defendant by its counsel interposed a demurrer to plaintiffs declaration, which said demurrer has been overruled by said court and the defendant is desirous of standing by its demurrer and appealing from the decision of this court to the supreme court of the United States:

Now, therefore, it is mutually agreed by and between the parties thereto, that on the filing with the clerk of this court the bonds and coupons of said defendant, amounting on the face for principal and interest to June 10th, 1880, to the sum of Seventeen Thousand, Eight Hundred and Sixteen Dollars and Twenty-nine cents (17,816.29,) judgment may be rendered for the plaintiffs for said sum against said defendant."

"And it is further agreed, that the rights of neither party shall be prejudiced by the making of this agreement further than that said judgment shall be rendered upon said bonds and coupons as if the same were wholly due, and this suit had been regularly brought on the same so due, and that the defendant may stand by its demurrer and shall have the right to insist upon its said demurrer on appeal to the Supreme court or the legal liability of said defendant to pay any portion of plaintiffs claim, but not that the whole sum was not by the terms of said bonds and coupons wholly due at date of suit.

"And it is further agreed, that said defendant may pray an appeal in due form of law without security on its bond; and that said cause when so appealed shall stand for trial or hearing under rule twenty (20) of the Supreme Court of the United States at the next term thereof.

DINSMOOR, STAGER & DINSMOOR,
Plaintiffs Attorneys.

W. J. HENRY, Attorney for Defendant.

This stipulation was filed June 10th, 1880, and made a part of the record in the cause.

Thereupon the court gave judgment for the plaintiffs in the sum of Seventeen Thousand Eight Hundred and Sixteen Dollars and Twenty-nine cents, from which judgment the town of Unity has prosecuted a writ of error; brings the record into this court, and assigns the following errors:

1st. The court erred in overruling the demurrer to plaintiffs declaration.

2d. The court erred in rendering judgment for the plaintiffs and against the defendant.

3d. The court erred in not sustaining the defendants demurrer to plaintiffs declaration and to each count thereof.

4th. The court erred in not holding that the bonds and coupons in plaintiffs declaration mentioned, were issued without warrant or authority of law.

5th. The court erred in not holding that the act under which the bonds were issued was unconstitutional and void.

W. J. HENRY,
For Plaintiff in Error.

The acts, of the General Assembly of the State of Illinois, pursuant to which the Bonds recite that they were issued, are as follows:

AN ACT TO INCORPORATE THE DECATUR AND INDIANAPOLIS RAILROAD COMPANY.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That David L. Allen, Wm. Martin, J. C. Pugh, Wm. S. Cressey, Richard J. Oglesby, Henry Prather, T. H. Haywood, W. D. Watson, John Rucker, E. J. Howd, Samuel Yamale, J. J. Peddecord, B. H. Cassell and J. R. Hammett, their associates, successors and assigns, be and they are hereby constituted a body corporate and politic, under the name and style of "The Decatur and Indianapolis Railroad Company" for the purpose of surveying, locating, constructing, completing and operating a railroad, from the town of Decatur in Macon county, in the State of Illinois, and thence in a direct line, upon the most eligible route, to the east line of the State of Illinois, in the direction of Indianapolis, in the State of Indiana, whenever the said persons, or their assigns and associates, shall organize in full compliance with the provisions of an act entitled "An act to provide for a general system of railroad incorporations," approved November 5th; A. D. 1849.

§ 2. Said road, with the points above herein indicated, is hereby declared of sufficient public utility to justify the taking of private property for the location, construction and maintenance thereof; and the company is hereby authorized to take private property for the purpose of constructing and maintaining the same, in the manner prescribed in the act referred to as aforesaid.

§ 3. Said company is hereby authorized and empowered to unite and form a junction with the Indiana and Illinois Central Railway Company, or any other Company which is or may hereafter be organized in the state of Indiana terminating on said line; and also, to unite and consolidate with the said Indiana and Illinois Central Railway company, upon such terms and conditions as the directors shall mutually agree upon; and in the event that said companies shall consolidate, then and in that case there shall be but thirteen directors on the whole line of road so consolidated, and the number to reside in each state shall be determined as in the case of consolidation.

§ 4. This act shall be in force from and after its passage. Approved February 8, 1853.

AN ACT TO AMEND THE ACT ENTITLED "AN ACT TO INCORPORATE THE DECATUR & INDIANAPOLIS RAILROAD COMPANY," APPROVED Feb. 8, 1853.

Whereas, under and in pursuance of the authority conferred in the above named act, the said Decatur and Indianapolis Railroad Company, after their organization, united, consolidated, and merged their stock with the stock of the Indiana and Illinois Central Railway Company, forming a single corporation by means of such consolidation under the name and style of the "Indiana and Illinois Central Railway Company," therefore,

Section 1. *Be it enacted by the people of the State of*

Illinois, represented in the general assembly, That the said Indiana and Illinois Central Railway Company, as existing under the said consolidation, is hereby declared to be entitled to hold, enjoy, and possess, all the property, rights, franchises, and powers held, enjoyed and possessed by either of said original corporations prior to their said consolidation, fully and effectually, to all intents and purposes, and to be entitled to have and hold all the rights, power and privileges conferred, or to be hereafter conferred, by law upon railroad corporations, organized under the act entitled "An act to provide for a general system of railroad incorporations," approved November 5th, 1849.

§ 2. That the said Indiana and Illinois Central Railway Company are hereby authorized and empowered to borrow money for the construction or equipment of their road, and for that purpose to issud bonds of the company in such form and on such terms as the board of directors may determine upon, drawing a rate of interest not exceeding ten per centum per annum, payable semi-annually, and if they deem it advantageous, may confer upon the holder of such bonds the right to convert the same into stock of the company, and may direct such bonds to be sold in such manner and on such terms as to them shall seem most advantageous for the interests of the company. And for the securing the payment of the principal and interest of such bonds, said company is further authorized and empowered to execute a mortgage or mortgages, a deed or deeds of trust, on the whole or any part of their

road, rights of way, real estate, franchises, income, or any other property, with such stipulations and conditions as the board of directors may deem advisable.

§ 3. Said Company may, by a vote of the stockholders, at any regular meeting, reduce the number of its directors to any number not less than seven, and may change the name and style of the corporation, and adopt such name as they may select, and by such newly adopted name shall be entitled to all the rights and power, and be subject to all the liabilities, to which they were entitled or subject under their previous name.

§ 4. Said company may merge their stock, consolidate and unite with any other railroad company, either within or without the state, whose road or roads cross, intersect or meet their road, on such terms and conditions as the directors shall determine upon; and in the event of such consolidation, may adopt such name for the consolidated corporation as shall be agreed on in the articles of consolidation and by such name shall succeed and be entitled to all the property, rights, powers and franchises pertaining to either of such corporations prior to their consolidation.

§ 5. This act shall be deemed and taken to be a public act, and shall be liberally construed in all courts of justice, and shall take effect and be in force from and after its passage.

Approved February 20, 1854.

An act supplementary to, and amending an act entitled

"*an act to incorporate the Decatur and Indianapolis Railroad Company*," approved February 8, 1853.

Whereas, in pursuance of a resolution of the board of supervisors of Macon county, adopted on the sixth day of October, A. D. 1866, a proposition was submitted to the qualified voters of said county, to be voted upon at the general election on the sixth day of November, then next ensuing, as to whether the said county would issue bonds to aid the building of the railway known as the Indiana and Illinois Central Railway, to the amount of sixty thousand dollars bearing 8 per cent. interest, and running not to exceed ten years, and payable at any time, at the option of said county, at which election a majority of all the votes cast thereat were cast in favor of the said proposition; and whereas, also, in pursuance of a resolution of the board of supervisors of said county, adopted on the third (3d) day of June, A. D. 1868, a proposition was submitted to the qualified voters of said county, to be voted upon the 25th day of July, then next ensuing as to whether said county would subscribe the further sum of forty thousand dollars to the capital of said Indiana and Illinois Central Railway, and would issue bonds therefor, payable twenty-five years after date, with interest at the rate of eight per cent. per annum, to be paid annually, at such banking house in the city of New York as the board of supervisors of said county might designate, and the further provision that said bonds might be paid at the option of said county at any time after five years from the date of the same, upon

giving six months notice thereof to the holders of the same: and whereas, such election was held, in pursuance of lawful notices to that effect, and there was cast at said election a lawful majority of legal votes in favor of said proposition: and whereas, also, by virtue of said last mentioned resolution of said board of supervisors, there was also submitted to the qualified voters of said county, to be voted upon at said last mentioned election, propositions for a subscription of one hundred thousand dollars to the capital stock of the Decatur and East St. Louis Railroad, a subscription of one hundred thousand dollars to the Pekin, Lincoln and Decatur Railroad, and a subscription of twenty-five thousand dollars to the Monticello railroad, for which said several subscriptions, bonds of like tenor and effect, as aforesaid, were to be issued, which said several propositions were voted for at said election *en masse*, and all received a majority of all the votes cast: now, therefore,

Section 1. *Be it enacted by the people of the State of Illinois, represented in the general assembly*, That the said several elections are hereby legalized and made valid, to all intents and purposes, and that any subscriptions made or hereafter to be made by the lawfully constituted authorities of said county, and any bonds issued or to be issued by said authorities, in pursuance of such subscription and of the said elections, or either of them, shall be taken, deemed and held, and are hereby declared to be valid and binding, to all intents and purposes whatsoever, any irregularities in the said elections,

the manner of holding the same or of voting upon said propositions or either of them to the contrary notwithstanding.

§ 2. The several townships in counties where township organization has been adopted, lying on or near to the line of said railroad, are hereby authorized to subscribe to and take stock in the said Indiana and Illinois Central Railway Company. Elections may be held in any such township upon the question whether such township shall subscribe for any specified amount of stock of said county, not exceeding one hundred thousand dollars, whenever a petition for that purpose shall be presented, as hereinafter specified.

§ 3. Whenever a petition sha ll be presented to the supervisor of any such township, signed by at least twenty-five legal voters of such township, setting forth the amount of stock proposed to be taken by such township, and specifying the time for holding such election, it shall be the duty of such supervisor to give thirty days notice of the time of holding such election in such township, which shall be the same time specified in said petition, and which said notice or notices shall be given in the same manner, and such election or elections shall be conducted in the same mode, and at the places provided for holding general elections in such townships; at which election or elections the qualified voters of such townships shall vote "For subscription," or "Against subscription," and the returns of such election or elections shall be made to the county clerk in the same manner and within the

same time and shall be by him opened and declared in the same manner as for elections held for state and county officers; and if a majority of votes cast at such election, by voters voting on that subject, shall be "For subscription" it shall be the duty of the supervisor and clerk of such township to subscribe, without unnecessary delay, upon the request of said company, for stock in said company to the amount so voted for, and to issue and deliver to said company the same amount as the stock so subscribed of the bonds of such township, payable at any time and place within the United States, specified, not exceeding fifteen years from the date thereof, or sooner, at the option of such township with interest, by coupons for the same thereto attached, at a rate not exceeding ten per cent, per annum, payable annually: Provided, that at any election held under the provisions of this act at any other time than the time for holding general elections for state and county purposes, it shall not be necessary for the board of registry to make a new register of the several voting precincts, but the register made of the legal voters at the last general election held for the election of state and county officers shall be used: Provided, that any legal voter whose name does not appear on said register shall be allowed to vote in the same manner that legal unregistered voters are allowed to vote at any general election.

§ 4. It shall be the duty of the respective authorities of the several townships which may vote such subscription to cause to be levied and collected a sufficent special tax

on all the taxable property, both real and personal, in such township, to pay the interest annually accruing on such bonds, and to liquidate the principal of the same within the time therein specified. Said tax shall be levied, assessed and collected by the same officers and in the same manner as is or shall be provided for the collection of other taxes under the general revenue laws of this state; and said tax, when collected, shall be paid by the respective collectors to the county treasurer, of the county in which the tax is collected, deducting one per cent. only for collecting the same; and the said county treasurers shall be, respectively, liable on their bonds for the faithful application of said tax to the payment of the interest and principal of the bonds for which said tax was levied and collected, and shall receive therefor, in full compensation, a commision of one per cent. only for receiving and paying out said tax.

§ 5. The time limited by the laws of this state for the completion of the construction of and putting said road of the said Indiana and Illinois Central Railway Company in operation is hereby extended until the first day of July, in the year of our Lord, 1875, prior to which time the said company shall incur no forfeiture of its franchises by reason of any failure to complete and put its said road in operation.

§ 6. This act shall take effect and be in force from and after its passage.

Approved March 27, 1869.

COPY OF BOND AND COUPON.
BOND.

No. 1. - - - - - - - - - - - - - $. 1.000.00.

UNITED STATES OF AMERICA,
State of Illinois.

PIATT COUNTY RAILROAD BOND. TOWNSHIP OF UNITY.

Know all men by these Presents, That the township of Unity, in the county of Piatt, and the State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Unity, hereby binds itself and agrees to pay to the Indiana and Illinois Central Railway Company, or bearer, at the American Exchange National Bank, New York, fifteen years after date with interest thereon at the rate of ten per centum per annum, which interest shall be payable annually in accordance with the several coupons hereto annexed, at the American Exchange National Bank, New York, upon the presentation and delivery of such coupons until the payment of the said sum. The said township hereby reserving the right to redeem this bond at any time after eight years from the date hereof by the payment of the interest due thereon at the time of such redemption.

This bond is one of a series of Fourteen Bonds, of One Thousand Dollars each, numbered from one to fourteen inclusive, issued under and by virtue of the Acts of

the General Assembly of the State of Illinois, entitled "An Act Supplementary to and Amending an Act entitled, An Act to amend the act entitled an act to Incorporate the Decatur and Indianapolis Railroad Co; Approved February 8th, 1853, "In force March 27th, 1869," and an Act entitled, "An Act to Fund and provide for paying the Railroad Debts of Counties, Townships, Cities and Towns," in force 16th, April, 1869, and in accordance with the vote of the electors of said Township of Unity, at a Special election, held in said township, on the 13th day of September, A. D., 1869, under the provisions of said acts, and in accordance therewith; and the faith of said township is hereby pledged for the payment of said principal sum and interest as aforesaid.

In testimony whereof the Supervisor and Town clerk of said Township of Unity, have hereunto set their hands and subscribed their names, this 12th day of May, A. D., 1873.

WILLIAM G. SNYDER, Supervisor.

SAMUEL H. HOLT., Town Clerk.

ENDORSEMENTS.

AUDITORS OFFICE, ILLINOIS,
Springfield, May 15, 1873.

I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within Bond has been registered in this office this day, pursuant

to the provisions of an act entitled, "An Act to Fund and provide for paying the Railroad Debts, of Counties, Townships, Cities and Towns," in force April 16, 1869.

In Testimony wereof, I have hereunto subscribed my name, and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT, Auditor, P. A.,

No. 1. - - - - - - - - - - - - - - - - $.1.000.00.

UNITY TOWNSHIP RAILROAD BONDS, PIATT COUNTY, ILLINOIS.

Interest, ten per cent. per annum, payable annually. Principal payable in fifteen years, or at any time after eight years, at the option of said township, from 12th, day of May, A. D. 1873.

Registered in my office this 12th, day of May 1873.

SAMUEL H. HOLT,
Township Clerk of Unity Township.

COUPON.

$.100.00. - - - - - - - - - - - - - - - No. 3.

PIATT COUNTY RAILROAD BOND.

Interest Coupon. Township of Unity.

Will pay to bearer, at the American Enchange National Bank, New York, on the 12th, day of May, 1878. One

hundred dollars, being one years interest on Bond numbered as above.

WILLIAM G. SNYDER. Supervisor.

SAMUEL H. HOLT, Town Clerk.

W. J. HENRY, FOR PLAINTIFF IN ERROR.

This is an action of Assumpsit brought on certain coupons, signed by the supervisor and town clerk of the town of Unity, on the 12th day of May, 1873, for the payment of interest on $14,000 of bonds, issued by said town to the Indiana & Illinois Central Railway Company.

The bonds purport to have been issued under and by virtue of the acts of the General Assembly of the State of Illinois, entitled, "An act supplementary to and amending an act, entitled an act to amend the act, entitled an act to incorporate the Decatur & Indianapolis Railroad Company, approved February 8th, 1853. In force March 27th, 1869;" and an act entitled "An act to fund and provide for the paying the railroad debts of counties, townships, cities and towns, in force April 16th, 1869," and in accordance with the vote of the electors of said township of Unity, at a special election held in said township

on the 13th day of September, A. D. 1869, under the provision of said acts. The act of April 16th, 1869, before referred to, simply provided a means of registering bonds issued *under the provisions of the General Law or Special Charters* and contained no authority for contracting debts or issuing bonds.

Section 7 of the act provides "that none of the benefits, advantages or provisions of this act shall apply to any debt, unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township, city or town, *under the provision of the laws of this State.*"

Revised Statutes, (Hurd's Ed.) 1880, p. 855.

This is the only section of the registration act in which any reference is made to the manner of contracting the debt, and therefore the registration act in considering the authority of the township to issue the bonds will have to be entirely laid out of view, as an *enabling act.*

By the written stipulation of record in this case, judgment was entered for the amount of the bonds and past due coupons, aggregating the sum of $17,816.29, subject to the opinion of this court upon the questions presented by the demurrer.

THE ACT IS A PRIVATE ACT.

The act under which the bonds purport to have been issued is a private act, and is not set forth in the plain-

tiff's declaration, nor even indicated by its title, and the court can not *ex-officio* take judicial notice thereof.

Leland v. Wilkinson, 6 Peters, 317.

Covington Draw Bridge Co. v. Shepherd *et al* 20 How. 232.

Baty v. Knowler, 9 Curtis, Dec. 39.

Soc. for Prop. of Gospel v. Young, 2 N. H., 310.

Pedicardis v. Road Co., 2 N. J. Law, 367.

Bank v. Walliston, 3 Harr. Dl., 90.

City Council v. Plank Road, 31 Ala., 76.

King v. Doolittle, 1 Head, (Tenn.) 77.

The history of the course of legislation, with reference to the Decatur & Indianapolis Railroad Company is given in the preamble to an act to extend the time for completing the Indiana & Illinois Central Railway, in force February 22d, 1861, and is entitled "an act to extend the time for completing the Indiana & Illinois Central Railway." Private Laws 1861, p. 499.

The preamble is as follows: Whereas the Decatur and Indianapolis Railroad Company was legally incorporated under an act entitled 'an act to provide for *a general system of railroad incorporations*,' *in force November 5th* 1849: and, whereas, said Decatur and Indianapolis Rail-

road Company, afterwards united and consolidated with the Indiana and Illinois Central Railway Company, on the fourth day of May, A. D. 1853, in compliance with the provisions of an act entitled 'an act to incorporate the Decatur and Indianapolis Railroad Company,' in force February eighth, 1853, and of an act entitled 'an act to amend an act to incorporate the Decatur and Indianapolis Railroad Company,' in force February twelfth, 1854, whereby said Decatur and Indianapolis Railroad Company became and was named and styled 'The Indiana and Illinois Central Railway Company;' and whereas said Indiana and Illinois Central Railway Company, in compliance with the provisions of the 44th section of an act entitled 'an act to provide for a general system of railroad incorporations,' in force November 5th, 1849, began the construction of its road and expended thereon ten per cent. on the amount of its capital within five years after its incorporation." The act extended the time ten years for putting in full operation the Indiana & Illinois Central Railway, and by express provision is made public.

The 44th section of an act entitled "an act to provide for a general system of railroad incorporations" in force November 5th, 1849, is as follows: "If any such corporation shall not within five years after its incorporation, begin the construction of its road, and expend thereon ten per cent. on the amount of its capital, and finish the road and put it in full operation in ten years thereafter, its act of incorporation shall become void."

It is evident that the Decatur and Indianapolis Railroad Co. never took any steps toward the building or completion of its railroad. It was incorporate on the 8th day of February, 1853, and it consolidated with the Indiana & Illinois Central on the 4th day of May, 1853, only being in existence for a period of about three months; therefore its corporate existence was terminated if not by consolidation, by lapse of time and failure to comply with its charter of incorporation, long before the amendatory act of 1869, under which the bonds are claimed to have been issued, was passed, and there was nothing in being in the shape of the Decatur & Indianapolis R. R. Co., the charter of which could be either supplemented or amended.

THE EFFECT OF CONSOLIDATION.

When the consolidation was completed, the *old corporations* were *destroyed* and a *new* one was *created*, and its powers were granted to it, in all respects, in view of the law, as if the old *companies* had never *existed* and neither of them had ever enjoyed the *franchises* so conferred.

> Shields v. Ohio, 95 U. S. 323, and the authorities there cited.

"Consolidation," says this court, "is a *surrender* of the old *charters* by the *constituent companies*, the acceptance thereof by the *legislature* and the formation of a new company out of such portions of the old as enter into the new."

Railroad Co. v, Georgia, 98 U. S. 360.

Clearwater v. Meredith, 1 Wall. 40.

Lawman v. Lebanon, Valley R. R. Co. 30 Pa. St. 42.

McMahan v. Morrison, 16 Ind. 172.

Ohio v. Sherman, 22 Ohio St. 411.

Shields v. Ohio, 26 Ohio St. 86.

It is insisted by counsel upon the other side, that these authorities have been overturned by the decision of this court (Central Railroad and Banking Co. v. Georgia, 2 Otto 665,) in which the court say that "it may be that the consolidation of *two corporations*, or amalgamation, as it is called in England, if full and complete, may work a *dissolution* of them both, and its effect may be the creation of a new corporation. Whether such be the effect or not must depend upon the statute, under which the consolidation takes place, and of the intention therein manifest."

After referring to the case of McMahan v. Morrison, Clearwater v. Meredith and Lawman v. Lebanon Valley R. R. Co., *supra*, the court further say, "we are not called upon, however, now to determine whether a consolidation effected under a statue, making no express grant of new corporate existence, may not in some cases *work a dissolution* of the *existing corporations*, and at the same

time the creation of a *new company;* for in the present case we think the act of 1872, plainly contemplated *no such* thing."

Both the cases of Shields v. Ohio and the R. R. Co. v. Georgia, *supra*, were decided *subsequent* to the case of the Central R. R. Co. v. Georgia, and in the last of these cases, this court expressly refers to Lawman v. Lebanon Valley R. R. Co., Clearwater v. Meredith and McMahan v. Morrison and approves the reasoning contained in each of them, so that the question of the effect of *consolidation* may be now regarded as *finally settled* by the determination and decisions of this court. See also the State *ex rel* v. Bailey, 16 Ind. 46. That such was the effect, however, in this case, is settled by the *preamble and first section* of the *amendatory act*, entitled "an act to amend the act, entitled an act to incorporate the Decatur & Indianapolis Railroad Company," approved February 8th, 1853, which provides that the said Indiana and Illinois Central Railway Company, as *existing* under the said *consolidation*, is hereby declared to be entitled to hold, enjoy and possess all the property, rights, *franchises* and powers, held, enjoyed and possessed by either of said original corporations prior to their said consolidation, fully and effectually, to all intents and purposes.

It is a fundamental maxim of the law, that a corporate franchise cannot be granted to, held, enjoyed and exercised by two corporations at the same time, for the reason that the grants would be inconsistent.

THE SURRENDER OF THE CHARTER OF THE DECATUR & INDIANAPOLIS R. R. CO., EFFECT OF.

The charter or act of incorporation from the government is in the *nature of a contract*, and therefore, in order to complete its creation something more than the mere grant is *required*. It must be *accepted* by the incorporators; it is the concurrence and acceptance of the charter which gives force and effect to it.

Angell & Ames, on Corp. (10 Ed.) § 81, p. 63.

It is clear that the government can not enforce the *acceptance* of a charter upon a private corporation, without consent.

King v. Passimore, 3 Term Rep. 240.

Baily v. Mayor of New York, 3 Hill 543.

Ellis v. Marshall, 2 Mass. 269.

Lincoln & Ken. Bank v. Richard 1 Green'f 79.

Fire Dep't v. Kipp, 10 Wend. 266.

That the charter of incorporation is considered in the light of a contract between the state and the incorporators is fully settled.

Dartmouth College v. Woodward, 4 Curtis Dec. 482,

No power is reserved in the charter of the Decatur and

Indianapolis R. R. Co., or in the general law under which the charter is granted, to *alter or amend the charter* or divest the corporation of any of its *franchises* without the consent of the incorporators.

Dartmouth College v. Woodward, *supra* per Story J. 512.
Rex v Passimore, 3 Term Rep. 199.

The charter has all the essential elements of a contract, which are the following: First, the assent or agreement of two competent parties; second, a legal and competent object or subject matter; third, a mutual legal consideration; fourth, a mutuality of obligation. In the absence of either one of these essential requisites, there can be no contract, change or modification of a contract.

Toledo Bank v. Bond, 1 Ohio, St. 657.

It may be regarded as firmly settled, that *powers or franchises* once granted can not be revoked, nor can any material change be made in such acts of incorporation, by the legislature, unless by the assent of the *corporators themselves*. Another and *different corporation*, although in part exercising the same *franchise* can not give the requisite assent.

Ohio v. Commercial Bank of Cin. 7 Ohio 128.

The consolidation of the two constituent companies operated to destroy the constituent charters and to *annul the contract* of incorporation between the state and the *incorpor-*

ators, and when that was once effected, the power to *amend* the *constituent charter* was at an end, because the constituent corporation being *functus officio*, had no power to accept the amendment.

2 Kent Com. (11 ed) p 377.

Slee v. Bloom, 19 John, 473.

THE POWER OF THE INDIANA & ILLINOIS CENTRAL R. W. CO. TO ACCEPT THE AMENDMENT.

The amendment under which the authority to issue the bonds is sought to be upheld, does not profess *to be an amendment* of the *charter of the Indiana and Illinois Central R'y Co.*; but the title of the act is, "An Act *supplementary* to and amending An Act, entitled An Act to amend the Act entitled an Act to incorporate the Decatur and Indianapolis R. R. Co." Approved February 8th, 1853. The Indiana and Illinois Central R'y Co., being a new and distinct corporation, with franchises directly conferred upon it by the legislature, under a different name from the Decatur and Indianapolis R. R. Co., (Private Laws 1861, p 499) had no *authority conferred* on it by law to accept or reject the *amendment*. The amendment is not an *amendment of its charter*, but is an attempt to amend a charter that has gone out of existence.

It can not be successfully maintained that the consoli-

dated company succeeded to the franchise and rights of the constituent companies by way of succession. It has been repeatedly held that a consolidation was not a mere alliance or confederation of the two companies. The act authorizing the consolidation, as well as the several acts recognizing the corporate existence of the consolidated company, provides for but one capital stock instead of two, with control and management, under one board of directors, with but one corporate seal and does not continue in existence the two constituent charters.

Railroad Co. v. Georgia, *supra*.

THE EFFECT OF REGISTRATION.

The declaration avers that the bonds were duly registered in the office of the Auditor of Public Accounts, and then avers that the plaintiffs are the bearers of the coupons upon said bonds, and that the defendant has failed to provide funds for the payment of said installments of interest, and has utterly neglected to pay the same, although the time of payment has long since elapsed.

The bonds being registered in the office of the *Auditor of Public Accounts*, precluded the *corporate authorities* of the township from making any provision for the payment thereof. The power so to do, is expressly conferred upon the Auditor of Public Accounts.

See Sections 3 and 4 of Registration act.

The breach in the *declaration* is not therefore well *assigned that the township has not provided the fund* for

the payment of the interest. It was not their duty under the registration law so to do, *non constat* the fund may have been provided, collected and in the State treasury.

WHAT IS NECESSARY TO BE EXPRESSED IN THE TITLE.

We regard as fully settled, by adjudication, but probably no where better and clearer than by the supreme court of *Indiana*. The constitutions of nearly all the states with reference to this question are substantially alike. In Indiana it was held, that "where the title of an *act was concerning promissory notes and bills of exchange*, that it was not legal to include in the body of the act, promissory notes, bills of exchange and other *instruments* of writing, for the payment of money and make the same negotiable; and that the act was void as to all the instruments mentioned therein, except promissory notes and bills of exchange; although it was obvious that it would have been easy to frame a title to the act which would have embraced them all and would have been unobjectionable."

Mewhester v. Price, 11 Ind. 199.

It is clear that in an amendatory act under such a title, nothing can be introduced except such matters as might have been incorporated in the original act under its title; were it otherwise, the constitutional restriction might be wholly evaded, under titles purporting merely to reform former acts, laws might be passed on subjects in no man-

ner expressed in the title of the original act or of the amendatory one.

State v. Bowers, 14 Ind. 198.

Weaver v. Sapsley, 43 Ala. 229.

Tuscola Bridge Co. v. Ormstead, 41 Ala. 9.

Stewart v. Kinsella, 14 Minn. 524.

Cutliff v. Sheriff, 3 Western Va. 538.

It has also been held, by the supreme court of Michigan, that "an Act entitled an Act for the preservation of the Muskegon River improvement," could not lawfully provide for the levy and collection of tolls, for the payment of the expenses for constructing the improvement, as the operation of the act was carefully limited by its title to the future.

Bryerson v. Utty, 16 Mich. 277.

City of San Antonio v. Lane 32 Texas 405.

Giddings v. San Antonio 47 Texas 548.

Tecumseh v. Phillips, 5 Neb. 305.

Under the constitution of *Michigan* which *provides* that "*no bill shall contain more than one subject, which shall be clearly expressed in its title*," the supreme court in giving construction to it used this language: "The practice of bringing together into one bill subjects diverse in their nature and having no necessary connection, with a

view to combine in their favor the advocates of all and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corrupting to the legislature and dangerous to the state. It was scarcely moreso, however, than another practice, also intended to be remedied by this provision, by which through dexterous management clauses were inserted in bills of which the title give no intimation, and their passage secured through legislative bodies, whose members were not generally aware of their intention and effect. The object of these constitutional provisions, is to prevent surreptitious legislation, by incorporating into bills obnoxious provisions, which have no connection with the general object of the bill, and of which the title gives no indication."

People v. Mohana, 13 Mich. 494.

The same question has been under consideration, by the supreme court of *New York*, in a number of well considered cases. In one of which it is said, "the provision of the constitution of this state is very plain and simple and easily understood. It is, that no private or local bill which may be passed by the legislature, shall embrace more than one subject. The purpose of the constitution was that neither the members of the legislature, nor the public should be misled by the title." The concluding paragraph in the opinion of the court is, that "we are clearly of the opinion, that in regard to the law in question in this case, the subject or object thereof is not embraced

in its title, and must therefor be held to have been passed in violation of this provision of the constitution."

People v. Hills, 35 N. Y. 449.

Huber v. The People, 49 N. Y. 133.

In the case of Durkee v. The City of Janesville, 26 Wis. 697, it was said that "although the sole and only object of the law is to legalize and render valid certain proceedings of the city of Janesville, yet there is not the least reference in the title to the locality which it affected; otherwise all the evil and mischief which the constitution intended to guard against and prevent by requiring the subject of the law to be expressed in the title, will surely follow.

Neuendorff v. Duryea, 25 Am. Rep., 238.

Nearly all the states have similar *constitutional provisions* and every one of them, so far as our research has gone, have held these provisions of the constitution to be mandatory, except Ohio and California.

THE RULE OF CONSTRUCTION IN ILLINOIS.

Section 23 of Article 3 of the Constitution of 1848, *provides that "no private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title."*

In giving construction to this provision of the constitution, the first case is Belleville &c. R. R. Co. v. Greg-

ory, 15 Ill. 20. It was held that "a law which authorized the construction of a railroad with a branch or extension, the purchase of land and the purchase of a lease or ferry franchise, embraced but one subject, and that it was sufficiently expressed in the title, 'an act to incorporate the Belleville & Illinoistown Railroad Company.'" From this view of the question, Judge Treat dissented. Afterwards it was held, that "a provision in an amendatory act, incorporating a college, which prohibited the sale of ardent spirits within a distance of four miles from the college, was not unconstitutional, and that the court would treat it precisely as it would if found in the original charter, for the reason that it was designed for the benefit and well being of the institution."

O'Leary v. the County of Cook, 28 Ill. 538.

From this view of the question Judge Breese dissented, and maintained, that the only ground upon which the provision in question could be upheld was that it was germane to the original charter of corporation and that the amendment was too remote.

In the case of the Firemen's Benevolent Ass. v. Lounsbery, 21 Ill, 515, it was held, that "the Legislature had the right to provide, that foreign fire Insurance Companies may be burthened for the benefit of the Chicago Firemen's Benevolent Association, and that the revenue resulting from such burthens need not be paid into the state treasury," and that it was sufficiently expressed under the title of "an act to incorporate the Firemens Benevolent Asso-

ciation, and for other purposes." From the scope of the opinion, it is evident that this was not the controlling question in the case, and that it was only incidentally presented and considered; the court saying, "we think the sixth section germane to the objects of the bill and embraced properly in the same subject, the whole of which is sufficiently expressed in the title."

In the case of the Supervisors v. The People, 25 Ill. 181, the title of the act was, "an act to incorporate the Rock Island and Alton Railroad Company." The 16th section of the act provides for counties through which said road should pass, taking stock and issuing bonds to raise money to pay for the same: Held that the title was sufficient to embrace the whole of the law, and that it was a compliance with the constitutional requirement. In Erlinger v. Boneau, 51 Ill. 94, the title to the act was, "an act to prevent domestic animals from running at large in the counties of Monroe, St. Clair and other counties," the court saying, "what is the subject of the title? It is the prevention of domestic animals from running at large in certain localities. All of the provisions adopted in the act tended to produce that end."

In the case of Neiling v. The Town of Pontiac, 56 Ill. 175, the title was, "an act to extend the corporate powers of the Town of Pontiac." Held that the act embraced the complete charter of the town.

In Prescott v. The City of Chicago 60 Ill. 123, the title

was, "an act to amend the charter of the city of Chicago, to create a board of park commissioners, and to authorize the levy of a tax in west Chicago, and for other purposes." The act provided for extending the city limits, for establishing and providing for the improvement and regulation of public parks in the western division of Chicago: Held that these purposes constitute but one subject, and that was expressed in the title of the act.

In the city of Ottawa v. The People, 48 Ill. 238, the title was, "an act to authorize the Town of Ottawa, in LaSalle county, to erect two bridges across the Illinois and Michigan canal:" Held not necessary that the adjuncts of the subject of the *modus operandi* should be expressed in the title. So in Ross v. C. B. & Q. R. R. Co., 77 Ill. 127, it was held that an act entitled "an act to amend an act entitled an act to incorporate the Macomb, Vermont & Bath R. R. approved February 11th, 1853," which authorized the construction of a main line and branch road, was valid. In The People v. Brislin 80 Ill. 433, the title of the act was, "an act to enable the corporate authorities of two or more towns for park purposes to issue bonds, &c:" Held constitutional. In Bing v. Webber, the title was, "an act to authorize the city of Belleville and Town of Muscontah to issue bonds to aid in the building of a railroad;" was held constitutional. In Guild v. Chicago, 82 Ill. 472, the title was "an act to provide for the incorporation of cities and villages:" Held that any thing legitimately apper-

taining to the incorporation of cities and villages, is germane to the subject.

These are the cases cited and relied upon by counsel upon the other side as sustaining the constitutionality of the act in question, *not one of which go to the extent, that the court is required to go, in order to uphold this act.* In every one of the cases cited there was a leading and "controlling" subject, and the question invariably was, whether the different provisions of the act were *germane* to the *subject*, that is, the main purpose expressed in the title. If this could become operative at all, it could only become so by way of amendment to the charter to the Indiana and Illinois Central R'y Co., and the title of the ancillary and amendatory act, gives no indication of the subject or purpose of the act.

In the case of The People v. Mellen 32 Ill. 182, It was held, that "an Act entitled an Act to repeal certain acts therein named" was not broad enough to justify the legislature in going on with affirmative legislation. So also, "an Act entitled an Act to amend the charter of the village of Lockport," passed February 12, 1853, would not authorize the legislature to make appropriations to pay orders drawn by the president and trustees in 1867, and that the attempt to legalize was in violation of the provision of the constitution before referred to.

Lockport v. Gaylord, 61 Ill. 278.

"An Act to incorporate the Institution of Protestant

Deaconesses and provide for the management and control of a hospital in Chicago" that attempted in the body of the act, to authorize the establishment and maintenance of an Orphan House, Insane Asylum or School in other parts of the state, outside of the city of Chicago, was held to be liable to the constitutional objection, that it embraced more than one subject, and that not expressed in the title. The court saying, "upon the whole case, taking and considering, all the sections of the act together, having regard to its title, the constitutional provision referred to, and the principle of strict construction to be applied, we are of opinion, that this corporation is, by its charter, restricted as to place, to Chicago. That the general language, employed in the 3d section of the act, giving power to establish, control, govern and manage any Hospital, Orphan House, Insane Asylum or School, is to be taken, subject to the implied limitation, that such institution is located at Chicago."

People v. The Inst. of Prot. Deaconesses 71 Ill. 233.

The last case upon this subject in our own state court to which we desire to make reference is the case of Middleport v. The Aetna Life Insurance Company, 82 Ill. 562, and is directly in point: the question arose upon the act of March 24th, 1869. The act was entitled "an Act to enable Towns, Townships, Cities or Counties along the line of the proposed railroad to contribute towards its proposed construction," the court held, that "all the pro-

visions of a local or private law, passed while the constitution of 1848 was in force, which are not germane to the subject expressed in the title to the act, are void." This was a case where bonds had been issued by the town of Middleport to the Chicago, Danville and Vincinnes R. R. Company, and the court held, that "under the title of the act no power was conferred by the fourth section, for the reason that its provisions only conferred power to perform such acts as were prospective in their operation; and that to construe the act as retrospective in its operation renders it plainly unconstitutional."

It surely will not be seriously contended that, an *act incorporating or amending the charter of one railroad company*, under the restrictions contained in section 23 of article 3 of the constitution of 1848, can legally contain provisions conferring further *priveleges or powers upon another and distinct railroad corporation*. All the railroads in the state of Illinois have been constructed by corporations either existing under the general law, or under special charters, and under the constitution *constitute a contract* between the state and its incorporators; that is to say, each charter constitutes within the meaning of the constitution one *subject*, and the right exists between the immediate parties to the contract. Anything out side of the charter or beyond the limits of it, constitutes a separate and distinct subject and comes within the inhibition contained in section 23 of article 3 of the constitution of 1848.

"A corporation is strictly limited to the exercise of those powers which are specifically conferred upon it. The exercise of the corporate franchise being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation."

Baty v. Knowler, 4 Peters 152.

A charter granted to one railroad company, cannot in any sense become *germane* to a charter granted to *another* and distinct railroad company. No authority can or will be cited that goes to the extent of holding that under an act entitled an act to incorporate a certain railroad company named in the title of the act power can be conferred upon a *township to subscribe* for stock in another, different and distinct railroad company; and without such authority conferred upon the township by express legislative enactment, it cannot subscribe for stock in a railroad corporation.

Town of East Oakland v. Skinner, 94 U. S. 256.

Campbell v. P. & D. R. R. Co., 71 Ill. 614.

AUTHORITY TO VOTE MUNICIPAL AID, UNDER THE GENERAL STATUTE.

Under the general statute authorizing the incorporation of railroad companies, no authority was conferred upon *towns or townships* to vote municipal aid. The statute under the title of subscriptions in aid of railroads, expressly limits the right to subscribe for stock to *cities* and *counties* and does not embrace towns or townships.

THE POWER TO AMEND THE GENERAL STATUTE OF INCORPORATION BY A SPECIAL ACT.

The Decatur & Indianapolis Railroad Co. was legally incorporated under an act entitled "an act to provide for a general system of railroad incorporations," in force November 5th, 1849, (Private Laws 1861, p. 499,) and was not incorporated under the act to incorporate the Decatur and Indianapolis R. R. Co., in force February 8th, 1853. It derived its powers from the general statute of incorporation and not from the special act. By the express provision of the special act, the company is required to organize in full compliance with the provisions of the act providing for a general system for railroad incorporations.

This ancillary and amendatory act of 1869 attempts to change the corporate powers conferred on the Decatur & Indianapolis R. R. Co., by the *general statute*. This we insist the legislature had no power to do. It is not an attempt to amend or change the general ***statute***, under which this company was *incorporated*, but on the contrary it proposes to leave the *general statute* in force as to all other railroad companies, incorporated under it, and to extend the power of this corporation by a special act.

In the case of Lewis v. Webb, 3 Greenleaf, 326, it was held that, "where a special act had been passed authorizing in a particular case an appeal from a decree of the Judge of probate, no appeal being allowed under the general law of the state at that time, the act was unconstitu-

tional" and Chief Justice Mullen, said, "on principle then it can never be within the bounds of legitimate legislation to enact a special law, or pass a resolve dispensing with the general law in a particular case, and granting a privilege and indulgence to one man by way of exemption from the operation and effect of such general law, leaving all other persons under its operation."

In Holder v. James, 11 Mass. 396, it was held that the legislature had no constitutional right to suspend the statute of limitations in favor of one or more individuals, leaving it in force as a general law. In Durham v. Lewiston, 4 Green'f 140, the court reaffirmed the principle stated in Lewis v. Webb, and applied it to a legislative resolve, authorizing a party to prosecute a writ of review.

The *legislature is to confine* itself to making laws and cannot make *decrees* or exempt private individuals or *private corporations* from the operation of the general laws of the state.

Sedgwick on Stat. & Con. Laws pp. 166-7.

It is difficult precisely to classify these objectionable laws, but they will be found generally to range under three heads; first, *where the legislature by a special act has sought to dispense with a general law* in favor of an individual or private corporation; *Second*, where the act is one of legislation for a particular case; *Third*, where the act is in its nature judicial and seeks to influence di-

rectly or indirectly the determination of private controversies.

Taylor v. Porter, 4 Hill 141.

Powers v. Berger, 2 Selden, 358.

In Vermont an act of the general assembly releasing a debtor from imprisonment on an execution was held not to have the characteristics of a law and to be void; the court saying "a prescribed rule of civil conduct is the correct and universally approved definition of municipal law."

Heath v. Ware, 2 Vt. 175; and in the same state a special act of the legislature granting to a party the privilege of an appeal from the decision of the commissioners on the claim of an insolvent estate, after the time allowed by law for taking appeals, was held to be void.

Sanford v. Barry, 1 Aik. 121.

Hill v. Town of Sunderland, 3 Vt. 507.

So also, an act to review a commission, appointing commissioners upon the estate of a decease person after the commission had been closed, and after the expiration of the times limited by the general law, was held unconstitutional.

Bradford v. Brooks, 2 Aik. 284.

The 12th section of the bill of rights, constitution of 1848, provides that "every person within the state ought to find a certain remedy in the laws for all injuries or

wrongs which may be received in his person, property or character. He ought to obtain right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay, *conformable to the laws.*" It would seem that if this section of the constitution is not entirely meaningless, then it must be construed to require uniformity of legislation, both as to the right and the remedy; and if it would not be competent to dispense with the general statutes in furnishing a remedy in favor of particular individuals, neither would it be permissible to prescribe in favor of a particular railroad company, a right which could not be claimed in common by every other railroad company within this state. The phrase "*conformable to the laws*" must be construed as a limitation on the law making power, and to prohibit the passage of *special acts*, when those *special acts* are in conflict with the *general statutes* of the state.

There is still a more serious constitutional objection arising under section one of article ten of the constitution of 1848, (Hurd's Statute of 1880, p. 48:) that section of the constitution is as follows: "Corporations not possessing banking powers or privileges may be formed under general laws, but shall not be created by *special acts*, except for municipal purposes, and in cases where, in the judgment of the *general assembly*, the objects of the corporation cannot be attained under the general law." By the general law full and ample provisions were made for the incorporation of railroad companies,

and it required no special act to authorize persons desiring to incorporate, to obtain a *special license or authority* from the *legislature* before becoming *incorporated*. The general act was self executing, and because thereof, it can not be said that the special act, incorporating the Decatur & Indianapolis R. R. Co., under the general law was at all necessary or requisite, or could have been essential in the judgment of the general assembly. The objects of the corporation were all attainable under the general law.

If this is the correct view of the question, then the special act is obnoxions to this provision of the constitution. The corporation became and existed as a corporation *defacto*, under the general law. The special act being void, it follows that the amendatory acts are equally so.

THE SCOPE OF THE ANCILLARY AND AMENDATORY ACT OF 1869.

The preamble recites that in pursuance of a resolution of the board of supervisors, of Macon county adopted on the 6th day of October, 1866, a proposition was submitted to the qualified voters of said county to be voted upon at the general election on the 6th day of November, then next ensuing, as to whether the county would issue bonds to aid the building the railway, known as the Indiana & Illinois Central Ry., to the amount of $60,000. Whereas, also in pursuance of a resolution of the board of supervisors of said county, adopted on the 3d day of June, 1868, a proposition was submitted to the qualified voters of said

county, to be voted upon the 25th day of July next ensuing, as to whether said county would subscribe the further sum of $40,000 to the capital stock of the Indiana & Illinois Central Ry., and would issue bonds therefor, payable twenty-five years after date. And whereas, also by virtue of said last mentioned resolution of said board of supervisors, there was also submitted to the qualified voters of said county, to be voted on at said last mentioned election, propositions for a subscription of $100,000 to the capital stock of the Decatur & East St. Louis R. R.; a subscription of $100,000 to the Pekin, Lincoln & Decatur R. R.; and a subscription of $25,000 to the Monticello R. R. For which said several subscriptions bonds of like tenor and effect as aforesaid were to be issued, which said several propositions were voted for at said election *en masse* and all received a majority of all the votes cast.

There are two fatal objections to the legality of this election: *First*, there was not a majority of the qualified voters of the county (taking as a standard the number of votes thrown at the last general election, previous to the vote had upon the question of subscription, under this act, for county officers,) that voted in favor of the subscriptions. The preamble simply reciting "that they received a majority of all the votes cast."

Gross' Statute 3 ed. 1869, p. 552.

Second, it was illegal to vote for the four propositions *en masse*.

The first section of the act, therefore, attempted to le-

galize these four elections, held for the purpose of voting municipal aid to four different and distinct corporations, neither one of which is mentioned in the title to the act. If this amendment is to be construed as amending the charters of the four several companies named in the act, and if an acceptance of the amendment is essential to its binding efficacy, then we submit that it must be accepted by each of the four companies named, before it becomes operative; and as some of the companies are incorporated under special charters and others of them under the general law, it is difficult to see how the law should be construed with reference to the proposed amendments.

There are four subjects in the body of the act, instead of one, and neither subject is expressed in the title.

For these reasons, we insist that the act in question is unconstitutional, never was nor never can be accepted by the incorporators named in the title to the act. That the charter, by the act of consolidation, was surrendered back to the state, before the amendment was passed by the legislature; that the ancillary and amendatory act was an attempt to amend the general law of railroad incorporations by a special act; that there is more than one subject expressed in the body of the act, neither of which is referred to in the title; that the bonds were issued without warrant or authority of law and that the demurrer should have been sustained by the circuit court.

W. J. HENRY,
For Plaintiff in Error.

Sections 1 and 4 of the act of November 5th, 1849, under which the railroad, to which the bonds in controversy were issued, was organized, are as follows:

Section 1 (39). Any number of persons, not less than 25, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, running and maintaining such railroad, by complying with the following requirements: When stock to the amount of at least $1,000 for every mile of said road so intended to be built, shall be in good faith subscribed, and 10 per cent. paid thereon, as herein required, then the said subscribers may elect directors for the said company. Thereupon they shall severally subscribe articles of association, in which shall be set forth the name of the corporation; the number of years the same is to continue, which shall not exceed fifty years; the amount of the capital stock of the company, which shall be the actual cost of constructing the road, together with the cost for the right of way, motive power, and every other appurtenance for the completion and running of said road, as nearly as can be estimated by competent engineers; the number of shares of which said stock shall consist; the number of directors and their names, to manage the concerns of the company, who shall not be one-half in the number of the stockholders, and shall hold their offices until others are elected; the place from and to which the proposed road is to be constructed, and each county into or through which it is intended to pass, and its length, as near as may be, and the names of five commissioners to open books of subscription to the stock. Each subscriber to such article of association shall subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such com-

pany. The said articles of association may, on complying with the next section, be filed in the office of the secretary of state, and thereupon the persons who have subscribed, and all persons who shall, from time to time, become stockholders in such company, shall be a body corporate by the name specified in such articles.

Section 4 (42). When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, by the name stated in such certificate, and shall be capable of suing and being sued, and may have a common seal, and may make and alter the same at pleasure, and be capable in law of purchasing, holding and conveying any real estate and personal property whatever, necessary for the construction of such road, and for the erection of all necessary buildings, yards and appurtenances for the use of the same.

Gross' Statutes of Illinois, (3d Ed.) 1869, Title Railroads, pp. 541–2.

Section 1 of Laws of 1854, February 28th, authorizing consolidation, is as follows:

Section 1 (15). All railroad companies and plank road companies now organized, or hereafter to be organized, which now have, or hereafter may have, their termini fixed by law, whenever their said road or roads intersect by continuous lines, * * * are hereby authorized and empowered to consolidate their property and stock with each other, and to consolidate with companies out of this state whenever their lines connect with the lines of such companies out of this state.

Gross' Statutes of Illinois, (3d Ed.) 1869, Title Railroads, p. 537.

SUPREME COURT U. S.
FILED
JAN 4 1881
JAMES H. McKENNEY, Clerk

UNITED STATES SUPREME COURT.

October Term, A. D. 1880.

No. 903

TOWN OF UNITY,

Plaintiff in Error.

—vs.—

ALVAH A. BURRAGE, Et Al.,

Defendants in Error.

ABSTRACT, BRIEF AND ARGUMENT.

JAMES DINSMOOR, Attorney for Defendants in Error.

Sterling Gazette Company.

Supreme Court of the United States.

OCTOBER TERM, A.D. 1880.

THE TOWN OF UNITY,
Plaintiff in Error,

—vs.—

ALVAH A. BURRAGE, Et Al.,
Defendants in Error.

ERROR TO THE SOUTHERN DISTRICT OF ILLINOIS.

ABSTRACT OF THE CASE.

This is an action of assumpsit, brought by the defendants in error against the plaintiff in error, in the Circuit Court of the United States for the Southern District of Illinois, on certain notes of the plaintiff in error. The special declaration of the defendant in error was as follows:

"Alvah A. Burrage, Henry G. Crowell, Alphonso J. Robinson, as they are receivers of the property and effects of the Mercantile Savings Institution and citizens of the Commonwealth of Massachusetts, by Dinsmoor, Stager &

Dinsmoor, their attorneys, complain of the town of Unity, in the county of Piatt, and State of Illinois, which said town the plaintiffs aver to be a municipal corporation created by and existing under the law, and a citizen of the State of Illinois, of a plea of trespass on the case on promises. For that the said town of Unity, at said district, by the name and style of the township of Unity, on the 12th day of May, A. D 1873, made its fourteen promissory notes, the date where of is the day and year aforesaid, numbered 1, 2, 3, 4, 5 6, 7, 8, 9, 10, 11, 12, 13, 14, issued of that date and delivered on, to wit, the 15th day of May, A. D. 1873, signed by William G. Snyder, its supervisor, and Samuel H. Holt, its town clerk, by each of said promissory notes the said defendant promised to pay the Indiana and Illinois Central Railway Company, or bearer, the sum of one thousand dollars fifteen years after date, at the American Exchange National Bank, New York, with interest thereon at the rate of ten per cent. per annum, payable annually, in accordance with the several coupons annexed thereto, on presentation and delivery of the said coupons at the American Exchange National Bank, New York.

"And for said interest coupons were annexed to each of said promissory notes—a copy of one of which said promissory notes is hereto annexed, the others being exactly alike except as to numbers—and a copy of each of said coupons due and unpaid is hereto annexed.

"And each of said promissory notes recites that it is issued under and by virtue of a law of the State of Illinois, entitled "An act supplementary to and amending an act entitled 'An act to amend the act entitled an act to incorporate the Decatur and Indianapolis Railroad Company,' approved February 8th, 1853," in force March 27th, 1869. And under a law of the State of Illinois entitled "An

act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force 16th April, 1869. And in accordance with the vote of the electors of said township of Unity, at a special election held in said township on the 13th day of September, A. D. 1869, under the provisions of said acts and in accordance therewith.

"And the plaintiffs further aver that said promissory notes have been duly registered in the office of the auditor of public accounts of the State of Illinois, pursuant to said act of April 16, 1869, as from the certificate of said auditor of public accounts attached to each of said promissory notes will more fully appear.

"That the plaintiffs are the bearers of the coupons for interest on said promissory notes which fell due on the 12th day of May, A. D. 1878, being seven coupons of one hundred dollars each. And also of the fourteen coupons annexed to said promissory notes and of even number therewith, each of which said coupons became due and payable on the 12th day of May, A. D. 1879, making in all the sum of twenty-one hundred dollars.

"And the said defendant has failed to provide funds for the payment of said installments of interest at the American Exchange National Bank, New York. And has utterly neglected to pay the same, although the time of payment has long since elapsed."

Defendants in error also added the common counts, and concluded the breach as follows: "and being so indebted, the said defendant in consideration thereof, then and there undertook and promised to pay the plaintiff said several sums of money above mentioned, when thereunto afterwards requested, to wit: the said installments of interest which were due May 12, 1878, amounting to the sum of seven hundred dollars, with interest since said date;

and the said installments of interest which were due May 12, 1879, with interest on the same since said date. Yet the said defendant, not regarding its said promises and undertakings, but contriving, &c., although often requested so to do has not paid said plaintiffs either of said sums of money, above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused to the damage of said plaintiffs of four thousand dollars, and therefore, they bring this suit."

DINSMOOR, STAGER & DINSMOOR.
Plff's Att'ys

COPIES OF INSTRUMENTS AND ACCOUNT SUED ON.

COPY OF BOND AND COUPON.

BOND.

No. 1. $1000.00.

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS. }

PIATT COUNTY RAILROAD BOND—TOWNSHIP OF UNITY.

KNOW ALL MEN BY THESE PRESENTS, That the township of *Unity*, in the county of *Piatt*, and the State of Illinois, acknowledges itself to owe and be indebted in the sum of *one thousand dollars*, lawful money of the United States of America, which sum of money the said township of *Unity* hereby binds itself and agrees to pay to the Indiana and Illinois Central Railway Company, or bearer, at the *American Exchange National Bank, New York*, fifteen years after date, with interest thereon at the rate of ten per centum per annum, which interest shall be payable annually in accordance with the several coupons hereto annexed, at the *American Exchange National Bank*, New York, upon the presentation and delivery of such coupons until the payment of the said principal sum. The said township hereby reserving the right to redeem this Bond at any time after eight years

from the date hereof by the payment of the said principal sum and the interest due thereon at the time of such redemption.

This Bond is one of a series of Fourteen Bonds, of One Thousand Dollars each, numbered from one to fourteen, inclusive, issued under and by virtue of the Acts of the General Assembly of the State of Illinois, entitled "An Act Supplementary to and Amending an Act entitled 'An Act to Amend the Act entitled An Act to Incorporate the Decatur and Indianapolis Railroad Company; approved February 8th, 1853,'" in force March 27th, 1869, and an Act entitled "An Act to Fund and Provide for Paying the Railroad Debts of Counties, Townships, Cities and Towns," in force 16th April, 1869, and in accordance with the vote of the Electors of said Township of Unity, at a Special Election held in said township on the 13th day of September, A. D. 1869, under the provisions of said Acts, and in accordance therewith; and the faith of said township is hereby pledged for the payment of said principal sum and interest as aforesaid.

In Testimony Whereof, the Supervisor and Town Clerk of said township of *Unity* have hereunto set their hands and subscribed their names, this 12th day of May, A. D. 1873. WILLIAM G. SNYDER, Supervisor.

SAMUEL H. HOLT, Town Clerk.

ENDORSEMENTS.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, May 15, 1873.

I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within Bond has been registered in this office this day, pursuant to the provisions of an act entitled "An Act to fund and pro-

vide for paying the Railroad Debts of Counties, Townships, Cities and Towns," in force April 16, 1869."

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor, P. A.

No. 1. $1000.00

UNITY TOWNSHIP RAILROAD BOND, PIATT COUNTY, ILLINOIS.

Interest, Ten per cent. per annum, payable annually. Principal payable in Fifteen years, or at any time after eight years, at the option of said Township, from 12th day of May, A. D. 1873.

Registered in my office this 12th day of May, 1873.

SAMUEL H. HOLT,
Township Clerk of Unity Township.

COUPON.

$100.00. No. 3.

PIATT COUNTY RAILROAD BOND.

INTEREST COUPON.

Township of Unity will pay to bearer, at the American Exchange National Bank, New York, on the 12th day of May, 1878, One Hundred Dollars, being one year's interest on Bond numbered as above.

WILLIAM G. SNYDER, Supervisor.

SAMUEL H. HOLT, Town Clerk.

To this declaration plaintiff in error demurred generally to each count. The court overruled the demurrer, and the plaintiff in error elected to stand by its demurrer. And afterwards, June 10, 1880, the following stipulation was filed in said cause, to wit:

Stipulation.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss. Circuit Court, June Term, A. D. 1880.

ALVAH A. BURRAGE ET AL. *vs.* TOWN OF UNITY. } Suit on bonds and coupons.

Whereas the plaintiffs in the above entitled cause have instituted a suit in said court against said defendant to recover the amount alleged to be due on certain bonds and coupons, and whereas the defendant, by its counsel, interposed a demurrer to plaintiffs' declaration, which said demurrer has been overruled by said court, and the defendant is desirous of standing by its demurrer and appealing from the decision of this court to the Supreme Court of the United States:

Now, therefore, it is mutually agreed by and between the parties thereto, that on the filing with the Clerk of this court the bonds and coupons of said defendant, amounting on the face, for principal and interest to June 10th, 1880, to the sum of seventeen thousand eight hundred and sixteen dollars and twenty-nine cents ($17,816.29), judgment may be rendered for the plaintiffs for said sum against said defendant.

And it is further agreed that the rights of neither party shall be prejudiced by the making of this agreement further than that said judgment shall be rendered upon said bonds and coupons as if the same were wholly due and this suit had been regularly brought on the same so due. And that the defendant may stand by its demurrer and shall have the right to insist upon its said demurrer on appeal to the Supreme Court, on the legal liability of said defendant to pay any portion of plaintiffs' claim, but not that the whole sum was not by the terms of said bonds and coupons wholly due at date of suit.

And it is further agreed that said defendant may pray an appeal in due form of law, without security on its bond; and that said cause, when so appealed, shall stand for trial or hearing under rule (20) twenty of the Supreme Court of the United States at the next term thereof.

DINSMOOR, STAGER & DINSMOOR,
Plaintiffs' Attorneys.

W. J. HENRY, *Att'y for Def't.*

(Endorsed:) Filed June 10th, 1880.
J. A. JONES, Clerk.

Thereupon the court gave judgment for the defendants in error in the sum of seventeen thousand eight hundred and sixteen dollars and twenty-nine cents, from which judgment plaintiff in error has prosecuted a writ of error, brings the record into this court, and assigns the following errors:

1st. The court erred in overruling the demurrer to plaintiffs' declaration.

2d. The court erred in rendering judgment for the plaintiffs and against the defendant.

3d. The court erred in not sustaining the defendant's demurrer to plaintiffs' declaration, and to each count thereof.

4th. The court erred in not holding that the bonds and coupons in plaintiffs' declaration mentioned, were issued without warrant or authority of law.

5th. The court erred in not holding that the act under which the bonds were issued was unconstitutional and void.

The Acts of the General Assembly of the State of Illinois, pursuant to which the Bonds recite that they were issued, are as follows:

DISCREPANCY IN PAGINATION

Or

PAGES MISSING

And

CANNOT BE FOUND

DISCREPANCY IN PAGINATION

Or

PAGES MISSING

And

CANNOT BE FOUND

And in relation to section 1st, act of 1869, which at first blush seems to be obnoxious to the constitutional objection, we have to say, that the preamble to this act of 1869, refers to an election held November 6, 1866, in Macon county, to determine whether said county would issue bonds to the amount of $60,000 to aid in building the Indiana and Illinois Central Railway. It also refers to an election held July 25, 1868, to determine whether said county would subscribe and issue bonds to aid in the construction of four railroads, to-wit: Indiana and Illinois Central, Decatur and East St. Louis, Pekin, Lincoln and Decatur, and the Monticello. All of these several railroads centered in Macon county. At the second election the question submitted to the people of Macon county, was, whether subscriptions should be made to four several roads, viz: Indiana and Illinois Central, Decatur and East St. Louis, Pekin, Lincoln and Decatur, and the Monticello, and the propositions, in regard to these four roads, were voted upon *en masse*, as the preamble recites. The act incorporating the Pekin, Lincoln and Decatur, the Decatur and East St. Louis, and the Monticello, conferred authority upon the county of Macon, as well as other counties named in the several acts of incorporation, to vote these subscriptions. So that as to these three railroads the election was valid and good, and needed no legislative sanction.

[See act to incorporate the Pekin, Lincoln and Decatur Railroad Company, Priv. laws, Ills., 1867, vol. 2, p. 698, sec. 10; act to incorporate the Decatur and East St. Louis Railroad Company, *ibid*, p. 770, sec. 16; and "An act to incorporate the Monticello Railroad Company, and the act amendatory thereof." Priv. laws, Ills., 1865, vol. 2, page 184, sec. 2.]

Hence it was only necessary for the legislature in this

amendatory act of 1869, before proceeding to confer authority upon townships to subscribe for stock in the Indiana and Illinois Central, to declare (sec. 1) that the elections already held in Macon county in reference to subscriptions to this same railroad are valid. But in declaring the validity of a part of the transactions of that election (July 25, 1868) they have chosen to include the whole; manifestly without, except as to the Indiana and Illinois Central, rendering the elections held by the county of Macon any more valid or binding than they first were, for authority to hold such elections had been amply conferred prior thereto by legislative enactment, so far as concerned the three other railroads mentioned. The preamble, then, and section 1 of the act, when the purpose and object of this supplementary and amendatory act are considered and the whole is examined in the light of prior acts of the legislature, will be found in fact to have reference to no other railroad than the Indiana and Illinois Central. It also appears (a fact that likely enough escaped the notice of the framer of the act of 1869) by the act to incorporate the Decatur and Indianapolis Railroad Company (Priv. laws, 1853, p. 127, sec. 2), that so much of the Indiana and Illinois Central as is within the State of Illinois—originally called the Decatur and Indianapolis—was organized under the general act of railroad incorporation of 1849, and by that act (see an act supplemental to an act entitled "An act to provide for a general system of railroad incorporation," laws, 1849, 2d sess., p. 33, sec. 1) authority was expressly conferred upon counties and cities to subscribe for stock in any railroad organized under the laws of the State of Illinois, but no authority was conferred upon townships; so that the vote in Macon having been confined to the county, as a county, seems to have been within authority

already conferred by the legislature, and, waiving irregularities, needed no legislative sanction to render it valid and binding. We think it unnecessary further to examine section 1 of this act, or to cite authorities in support thereof from the Illinois Reports. If the uniform current of decisions on the subject can avail to sustain the act in question, then we submit it is abundantly sustained. If any deference is to be paid to the contemporaneous interpretation given to this clause of the constitution by the legislature of Illinois, repeated and continued during the entire period of the existence of the constitution of 1848, then we submit the act under which these bonds were issued gave all the necessary legislative authority for issuing said bonds.

But as a similar provision exists in the constitution of some other States, it may be well to examine the decision of other courts on this subject. The constitution of the State of Wisconsin contains a similar provision to that of Illinois, and this same question was raised in Phillips v. Town of Albany, 28 Wis., 340. The title of the act to which the same objection was taken, was, "An act to revise and amend the act to incorporate the Sugar River Valley Railroad, approved Mar. 29, 1855, and to authorize certain towns therein named to aid in the construction of said railroad." It was contended that the revising and restoring the corporate rights and franchises of the railroad company and amendment of its charter, and the authorizing of the towns to aid in the construction of the railroad by subscribing to the stock of the company, were distinct subjects of a private and local nature, which could not be joined in the same act. The court decided that the act embraced no more than one subject, to-wit: The building of the line of railroad named in it, or the creating of a corporation for that purpose, and providing how it might obtain

means for accomplishing it. That it was all the same general subject, which was all the constitution meant. The same point was made in the case of Mills v. Charleton, 29 Wis., 400. The title of the act is, "An act to authorize the city of Madison to reassess and collect certain taxes and assessments," and after providing for the reassessment and relevy of certain taxes and assessments for the pavement known as the Nicholson pavement, or any other pavement already laid down without authority of law, it proceeds also to authorize the municipal authorities to adopt and order the streets of the city or any portion thereof to be paved with the same or any other kind of pavement, whether patented or not, and either to purchase the patent for such city or to let the work to the lowest bidder, and also to authorize the adoption and use of any patented pavement in the future, and to legalize and make future taxes and assessments for this purpose." In delivering the opinion of the court, Dixon, C. J. says: "As already observed, the subjects of legislation are usually expressed with the utmost brevity and conciseness in these titles, and some consideration must be given to this circumstance in determining the question. The court is not to set aside or declare an act void because the subject was not as fully or as unequivocally expressed as it might otherwise have been. A liberal rule of interpretation must prevail in this respect, not only for the reason just stated, but because the proposition is to strike down and defeat the act of the legislature, which can never be done upon any slight or untenable grounds. If this title had read, "An act to authorize the city of Madison to reassess certain taxes and assessments and to collect certain taxes and assessments, there would then have been, as it seems to us, little doubt that it was sufficiently comprehensive to cover the entire subject of the bill. May not

the title, as it is, be reasonably understood and interpreted to mean the same thing? It appears to us that it may, that it is neither strained nor unwarranted, and is that which the court under the circumstances is in duty bound to adopt."

The constitutional provisions in the State of New York (Art. 3, Sec. 16, Con. 1846), may be said to be the same as that of Illinois, and in Conner v. Mayor, 5 N. Y., 285, the court say that an act entitled "An act in relation to the fees and compensation of certain officers in the city and county of New York," and which provided that the surrogate, clerk of the Superior Court, register, and clerk of the city and county of New York, should collect and pay over into the treasury of the city and county, all the fees, perquisites and emoluments which they were by law entitled to take, by virtue of their respective offices, and salaries were given to the various officers named in the act, payable out of the fees, perquisites and emoluments required to be paid into the treasury, and the amount of the salaries were fixed by the act, and power was given to the board of supervisors of said county to increase or diminish any salary to the extent of $500.00, "relates to and embraces but one subject, to-wit: the compensation of these officers, and this is expressed in the title. And the court say further that the design of the constitutional provision was to prevent the uniting of various objects having no necessary or material connection with each other, in one bill, for the purpose of combining various pecuniary interests in support of the whole which could not be combined in favor of either by itself."

So in the 8th N. Y., 241, Insurance Co. v. the Mayor. The title of the act was, "An act to enable the supervisors of the city and county of New York to raise money by

tax." It authorized the body named in the act, to raise and collect a sum not exceeding $1,606,655, for contingent expenses; $402,000, for public expenses: $185,000, for lamp district, and $295,000 for deficiency in the taxes the preceding year. A part of the contingent expenses accruing from repaving the streets, etc., to be levied on property south of 34th street, and the sum for the lamp district is to be collected within a district to be designated by the common council;" and the court say the title of the act embraces but one subject—the power to tax conferred upon the Board of Supervisors—and is so far a compliance with the Constitution. When we look at the body of the statute, we find that subject regulated and modified by special provisions, and the object designated for which the taxes are to be levied. If the power granted to levy the tax is one subject, which has not been questioned, then if the mode in which that power is to exercised is another, there would be no way of complying with the Constitution except by embodying the whole act in the title.

There must be but one subject, but the mode in which the subject is treated, or the reasons which influenced the legislature could not and need not be stated in the title, according to the letter and spirit of the Constitution. The purpose of the sixteenth section was, "that neither the members of the legislature, nor the public, should be misled by the title; not that the latter should embody all the distinct provisions of the bill in detail." So it was held that an act in relation to the W. V. Railroad Company may embrace provisions validating town bonds previously but irregularly issued. Harrisburg v. VanKeuren, 4 Abb. New York, N. case 45.

We submit then that by the decisions of the courts of

Illinois, Wisconsin and New York, the act of 1869, under which the bonds in question were issued, was constitutional and valid. If the object of the title of an act is to state the subject matter of the act, "that neither the members of the legislature nor the people shall be misled by it," then we submit the previous action of the legislature of Illinois, and the interpretation of the constitution by the Supreme Court of Illinois, had both been so uniform in favor of the insertion in railroad charters of a provision for county and township aid in their construction, that every member of the legislature might presume that a provision of the kind was embraced in the act in question, and the people at large knew by experience that unless such provision was in the charter the road never would be built. We do not find that this constitutional question has been raised in the Federal Court in any of the cases of "municipal bonds" reported, and unless our search has been at fault, this fact goes to show that the learned counsel, who have from time to time been employed to defend the suits, acquiesced in the interpretation of that constitutional provision as made by the action of the legislature and the judgment of the Supreme Court. And we respectfully submit that while, if that question were new, if the Supreme Courts of the States where this provision exists had not passed upon it, and rights and property had not become fixed by the unbroken current of decisions, this court might approach the consideration of this question as an open one.

With the light of these authorities let us examine the case at bar. The "Indiana and Illin is Central Railway Company" had no chartered existence in this State prior to the act of February 10, 1853, incorporating the "Decatur and Indianapolis Railroad Company," in which that company was recognized as an existing corporation, and said

D. & I. R. Co. was authorized to consolidate with it. The amendatory act of February 20, 1854, recognized the consolidation of the two companies, and the change of name by the Decatur and Indianapolis to that of the "Indiana and Illinois Railway Company." If the argument of counsel for defence is good, then, on the consolidation of the two companies, the charter of the Decatur and Indianapolis was surrendered to the State, and there was nothing to amend by the act of 1854. But we may ask, if the charter of the "Decatur and Indianapolis Railroad Company" was surrendered by that act, what was there left of chartered rights to support the consolidation? The "Indiana and Illinois Central" never had any charter. They of course had nothing to surrender, and if any chartered rights were surrendered it must have been those of the "Decatur and Indianapolis Company." This is the logical result of the premises of the defendant's counsel, and we submit that the premises must be wrong. It will hardly be seriously contended by the defendant that the act of February 20, 1854, was not an amendatory act to that of 1853, and that it is not properly entitled. It will not be contended, we think, that the title of the former of these acts was obnoxious to the constitutional objection raised by the defendant in this case. It expressed but one subject. The act of 1854 was entitled an act to amend an act entitled an act to incorporate the "Decatur and Indianapolis Railroad Company," approved February 8, 1853. But it may be contended that the name of that company had been changed, it was no longer the "Decatur and Indianapolis Railroad Company," but was the "Indiana and Illinois Railway Company." But what was to be amended? Was it the "Indiana and Illinois Railway Company" or the act of the legislature which breathed the breath of life into it and

made it a corporate entity? Why, clearly, the latter. Then we submit the amendatory act was correctly entitled. But it is said the object of the title is to inform the members of the legislature and the public of the character or nature of the business pending before the legislature in bill proposed. Try the title by this test and we find it refers the inquiring mind to the title of the former act, and the date of its approval, which would better enable the party seeking the information to readily find it than any other form of expression that can be suggested. On carefully examining the Private Statutes of Illinois with the aid of Gross' Index, we find that the legislature in 1855 passed an act entitled an act to authorize the "Indiana and Illinois Central Railway Company" to extend their road from Decatur to a point on the Mississippi river opposite N. Market street, St. Louis, and limiting the time when it should be begun and finished. We also find an act passed in 1857, entitled an act to amend an act entitled an act to authorize the "Indiana and Illinois Central Railroad Company" to extend their road; approved February 14, 1855, which provided for a change in the terminus on the Mississippi, and limited the time of commencement and completion of the work. Neither of these acts make any reference to the acts of 1853 and 1854. In the acts of 1861 we find one entitled "An act to extend the time for completing the Indiana and Illinois Central Railway," approved Feb'y 21, 1861. The preamble of this act refers to the act incorporating the "Decatur and Indianapolis Railroad Company," of Feb'y 8, 1853, and the amendment of that act, approved Feb'y 12, 1854—and thus by the preamble gives the information required by the constitution to be given in the title. The only purpose of this act seems to have been to extend the time for completion of the road, which had been

limited in the acts of 1855 and 1857. Now, in 1869, it was found that this road had not been built. It lacked one thing—money—and the aid of legislative enactments is again evoked. It became necessary to authorize towns on the line of the road to take stock in this company and issue bonds therefor. And the legislature adopted as a title to that act the one in question: "An act supplementary to and amending an act entitled an act to amend the act entitled an act to incorporate the "Decatur and Indianapolis Railroad Company," approved February 8, 1853. There could be no mistake about the act amended, nor where the road was located. It was between Decatur and the line between Indiana and Illinois. The subject was the building of that line of road. The acts of 1853 and 1854 granted the franchise and provided for the organization of the company to build this road. It cannot be denied that if the act of 1869 had been in the original charter of 1853, no exception could have been taken to it. The title of the act was sufficient to indicate all provisions necessary to put the road in operation.

We have, perhaps, taken more time to discuss this case than was necessary. It is admitted by the pleadings that the defendants in error are the *bona fide* holders, for a valuable consideration, of the bonds in question. We suppose this court takes judicial notice that the railroad for the construction of which, in part at least, the bonds were issued, has been built and is one of the *post roads* of the nation. This case adds one more to the already long list of municipal corporations that, having acquired the money of widows and orphans by means of their specious promises, issued in the shape of nicely executed bonds, and by means of that money obtained railroad facilities, enhanced the value of their property, let in the light of civilization, brought com-

fort and refinement to their homes—and instead of keeping plighted faith by honest payments, invoke the ingenuity of learned counsel to enable them to escape the payment of an honest debt, and thereby fasten upon their corporate name the mildew and blight of repudiation. No decision of this honorable court can be found which warrants the learned counsel for the plaintiff in error to attempt the result which he seeks in this case—one which would be alike disastrous to plaintiff and defendant.

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